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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 IN RE: UBER TECHNOLOGIES, INC.,
16 PASSENGER SEXUAL ASSAULT
LITIGATION

Case No. 3:23-md-03084-CRB

**DEFENDANT UBER TECHNOLOGIES,
INC., RASIER, LLC, AND RASIER-CA,
LLC'S BRIEF IN SUPPORT OF
CLAWBACKS IDENTIFIED IN UBER'S
JUNE 5, 2025 PRIVILEGE LOG
PURSUANT TO SPECIAL MASTER
ORDER NO. 4, § III, ¶ 4 (DKT. 2933)**

18 This Document Relates to:
19 ALL ACTIONS

21 Pursuant to Special Master Order No. 4, III, ¶ 4 (Dkt. 2933), Defendants submit this brief in
22 support of Uber's privilege assertions for documents it clawed backed on June 3, 2025 pursuant to
23 Pretrial Order No. 14 and included in its June 5, 2025 privilege log. Uber respectfully requests that
24 the Special Master uphold Uber's privilege claims for the 21 documents Plaintiffs have challenged.

26 Uber incorporates by reference the legal standard and arguments set forth in its prior briefing
27 (Dkts. 2433, 2461, 2528, 2544, and 2580). As further support for its privilege claims, Uber provides
28 the arguments and factual support listed below, including the declaration from Neils Melius, Uber's

1 Senior Counsel, Litigation (Ex. A). The applicable legal standards and arguments outlined below and
2 in prior briefs, the attached declaration from in-house counsel, and the factual material previously
3 provided to the Special Master, when reviewed in conjunction with the challenged documents and the
4 associated metadata fields, establish that the documents at issue are privileged.

5
6 **I. Plaintiffs Did Not Timely Challenge the Privilege Claims for These Documents.**

7
8 The Special Master should reject Plaintiffs' challenges to the 21 documents at issue because
9 they are untimely. Uber clawed these documents back on June 3, 2025. Defendants provided a
10 privilege log and replacement images on June 5, 2025. Pursuant to Special Master Order No. 4, § III,
11 Plaintiffs challenges were due "within five days" of receiving the clawback materials, so they were
12 due by June 10, 2025. Plaintiffs however did not provide their challenges to Uber until June 12, 2025.
13 There is no justification for the belated challenges. Plaintiffs' counsel indicated during conferrals that
14 they did not believe their challenges were late because the five day deadline does not include
15 weekends. But that position is contrary to Federal Rule of Civil Procedure 6(a)(1), which expressly
16 states that, in computing time, parties are to "count every day, including intermediate Saturdays,
17 Sundays, and legal holidays." Plaintiffs' position is also not supported by the plain language of the
18 order, or by how both parties have been operating over the past four months. The Special Master
19 should therefore reject all these challenges.
20

21
22 **II. Uber Has Appropriately Exercised Its Right To Claw Back Privileged Documents.**

23
24 Even if Plaintiffs' challenges were timely, the documents should remain protected as
25 privileged, and subject to other applicable protections, notwithstanding prior production. Uber has
26 appropriately exercised its clawback rights under Stipulated Pretrial Order No. 14: Federal Rule of
27 Evidence 502(d) and Privilege Materials ("PTO 14") (Dkt. 396). PTO 14 provides that "the production
28

1 of any privileged or otherwise protected or exempted information in this case *shall not be deemed a*
 2 *waiver or impairment of any claim of privilege or protection in this case* or in any other federal or
 3 state proceeding, including, but not limited to, the attorney-client privilege, the protection afforded to
 4 work product materials, statutory privileges and protections, or the subject matter thereof, as to the
 5 produced document and any related material.” PTO 14, Sec. B.2 (emphasis added).

6 Uber timely notified Plaintiffs of its intention to clawback these documents. Uber has provided
 7 a privilege log and replacement images for all documents subject to its clawback request. Plaintiffs
 8 have identified four documents at issue that were originally logged as part of Tranches 1-4
 9 (JCCP_MDL_PRIVLOG043850;
 10 JCCP_MDL_PRIVLOG043854; JCCP_MDL_PRIVLOG043856; JCCP_MDL_PRIVLOG043859).
 11 Uber is considering seeking relief and/or reconsideration from Judge Cisneros regarding any waiver
 12 claim. (ECF 2855). Accordingly, Uber respectfully requests that the Special Master defer ruling on
 13 these documents until the potential waiver issue is adjudicated and resolved before Judge Cisneros.
 14 The Special Master, however, should consider the privilege and work product claims applicable to the
 15 remainder of the documents at issue in this set.
 16
 17

18 **III. Additional Factual Information Supports Uber’s Privilege Assertions.**

19 To provide additional factual support for its privilege assertions Uber submits the attached
 20 declaration from Neils Melius, Uber’s Senior Counsel, Litigation (Ex. A). As Mr. Melius explains in
 21 his declaration, all of the documents at issue were compiled by Uber’s in-house counsel, or Uber’s
 22 non-attorney employees at the direction of Uber’s in-house counsel, in collaboration with Uber’s
 23 outside defense counsel, A&O Shearman, to prepare Catherine Gibbons, Uber’s Senior Director,
 24 Global Head of Platform Safety, Identity, Risk & Payments, for her deposition in the Boston
 25 Retirement Systems litigation. Some of these documents even contain highlighting made by Uber’s
 26
 27
 28

1 outside counsel. All of the documents are, therefore, protected by the work product doctrine, as they
2 reflect the impressions and conclusions of Uber’s in-house and outside counsel.

3 Attorney work product—including materials prepared by attorneys or created at the request of
4 an attorney in connection with ongoing or anticipated litigation—is subject to protection. *See United*
5 *States v. Sanmina Corp.*, 968 F.3d 1107, 1119 (9th Cir. 2020) (work-product doctrine protects “from
6 discovery documents and tangible things prepared by a party or his representative in anticipation of
7 litigation”). While certain types of work product may be discoverable upon a showing of substantial
8 need, attorney work product materials that contain an attorney’s “opinion work product (*i.e.*, mental
9 impressions, conclusions, or legal theories” are “afforded near absolute protection from
10 discovery.” *United States ex rel. Everest Principals, LLC v. Abbott Labs.*, No. 3:20-cv-286-W-MSB,
11 2024 WL 2152455, at *3 (S.D. Cal. 2024) (citation omitted); *Green v. Baca*, 226 F.R.D. 624, 652
12 (C.D. Cal. 2005) (“Opinion work product, including the mental impressions, conclusions, opinions, or
13 legal theories of an attorney, is entitled to nearly absolute protection.”). The Third Circuit has held
14 “the selection and compilation of documents by counsel [which were placed in a folder]. . . in
15 preparation for pretrial discovery falls within the highly-protected category of opinion work product.”
16 *Sporck v. Peil*, 759 F.2d 312, 316 (3d Cir. 1985) (“In selecting and ordering a few documents out of
17 thousands counsel could not help but reveal important aspects of his understanding of the case.”
18 (quoting *James Julian, Inc. v. Raytheon Co.*, 93 F.R.D. 138, 144 (D. Del. 1982))). Relying on *Sporck*,
19 courts in the Ninth Circuit and throughout the country have likewise found that documents an attorney
20 selected and compiled to prepare a witness for deposition are protected attorney work-product. *See*
21 *Stevens v. Corelogic, Inc.*, No. 14CV1158 BAS (JLB), 2016 WL 397936, at *9 (S.D. Cal. Feb. 2,
22 2016); *In re Allen*, 106 F.3d 582, 608 (4th Cir. 1997); *Shelton v. Am. Motors Corp.*, 805 F.2d 1323,
23 1329 (8th Cir. 1986).

Here, all of the documents at issue were compiled by Uber's in-house counsel, or Uber's non-attorney employees at the direction of Uber's in-house counsel, in collaboration with Uber's outside counsel A&O Shearman to prepare Ms. Gibbons for deposition. *See* Ex. A. Indeed, as the titles of the documents reflect, each document was placed in tabs in a binder used to prepare Ms. Gibbons for her deposition. The selection and compilation of these documents necessarily reflects the mental impressions, conclusions, and legal theories of Uber's in-house and outside counsel, as they selected a few documents out of thousands and put them in a tabbed binder, revealing "important aspects of their understanding of the case." For this reason alone, the Special Master should find that all 21 documents are protected from discovery. *Id.* Moreover, 12¹ of the 21 documents are protected for the additional reason that they contain highlighting from Uber's outside counsel (*see* Ex. A), which inherently reveals their impressions and conclusions regarding the relative importance of the highlighted portions of the documents.

For these reasons, the Special Master should uphold Uber's privilege claims as to each of the documents submitted for review.

DATED: June 26, 2025

Respectfully submitted,

SHOOK HARDY & BACON L.L.P.

By: /s/ Maria Salcedo

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¹ JCCP_MDL_PRIVLOG043854, JCCP_MDL_PRIVLOG043859, JCCP_MDL_PRIVLOG104710, JCCP_MDL_PRIVLOG104734, JCCP_MDL_PRIVLOG104743, JCCP_MDL_PRIVLOG104748, JCCP_MDL_PRIVLOG104756, JCCP_MDL_PRIVLOG043850, JCCP_MDL_PRIVLOG104706, JCCP_MDL_PRIVLOG104721, JCCP_MDL_PRIVLOG043856, and JCCP_MDL_PRIVLOG104727.

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically send notification of the filing to all counsel of record.

/s/ Maria Salcedo
MARIA SALCEDO